



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 4, 1993

Ms. Melissa Winblood-Franco
Assistant City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79999

OR93-086

Dear Ms. Winblood-Franco:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17760.

The El Paso Police Department has received a request for a certain police report. Specifically, the requestor seeks copies of photographs and a police report involving Mr. James Ray Bolton in a rape/suicide incident that occurred on December 7, 1969. You have submitted the police report to us for review and have marked the portions that you claim are excepted from required public disclosure by section 3(a)(1) of the Open Records Act.

Information may be withheld from required public disclosure under section 3(a)(1) of the Open Records Act if it meets the criteria articulated for common-law privacy by the Texas Supreme Court in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing *and* is of no legitimate concern to the public.¹ Information which identifies or would tend to identify a victim of a serious sexual offense may be withheld under common-law privacy. Open Records Decision Nos. 393 (1983). Detailed descriptions of an incident of aggravated sexual assault is also protected by common-law privacy interests. Open Records Decision No. 339 (1982).

The police report submitted to us for review contains information relating to an incident of aggravated sexual assault. We have reviewed the report. It contains

¹In contrast, the constitutional right of privacy protects information relating to marriage, procreation, contraception, family relationships, and child rearing and education. See Open Records Decision No. 447 (1986) at 4.

information graphically detailing the incident of aggravated sexual assault. Its release would identify or would tend to identify the victim of the aggravated sexual assault. We conclude that the information that you have marked is intimate or embarrassing and is of no legitimate concern to the public. Accordingly, the information for which you seek protection under the common-law doctrine of privacy must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act.

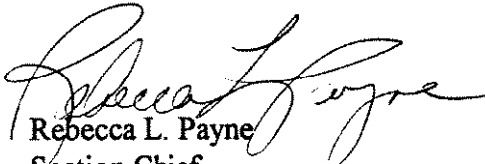
Some of the information submitted to us for review relates to physical evaluations of the rape victim. Section 5.08 of the Medical Practice Act, article 4495b, V.T.C.S., provides:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

The document submitted as Exhibit J was, on its face, created by or under the supervision of a physician. This record clearly falls within the protection of section 5.08 of the Medical Practice Act and must be withheld in its entirety from required public disclosure under section 3(a)(1) of the Open Records Act. The remaining information must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-086.

Yours very truly,


Rebecca L. Payne
Section Chief
Open Government Section

RLP/GCK/mc

Ref.: ID# 17760

cc: Ms. Cheryl Ann Bolton Ames
1716 Borealis Southeast
Rio Rancho, New Mexico 87124